

FILE COPY

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KATHLEEN KAY COX, L.P.N.,
f.k.a. KATHLEEN KAY BARTEE,
RESPONDENT.

FINAL DECISION
AND ORDER
LS9108211NUR

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 8th day of November, 1991.

Jacqueline A. Johnson

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KATHLEEN KAY COX, L.P.N.,
f.k.a. KATHLEEN KAY BARTEE,
RESPONDENT.

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PROPOSED DECISION
Case No. LS9108211NUR

The parties to this proceeding for the purposes of Wis. Stats. sec.
227.53, are:

Kathleen Kay Cox
1231 S. Atlanta Place
Tulsa, OK 74104

Board of Nursing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing was held in the above-captioned matter on September 20, 1991, commencing at 10:00 a.m. in Room 133 at 1400 East Washington Avenue, Madison, Wisconsin. Appearing for complainant was Attorney Richard Castelnovo, Department of Regulation and Licensing, Division of Enforcement. The respondent, Kathleen Kay Cox, was not present nor was anyone present to represent her. By letter dated September 6, 1991, respondent stated that she did not intend to be present at the hearing and enclosed her license as a licensed practical nurse, indicating that it was being voluntarily surrendered. (See, Exhibit 5).

In light of respondent's not appearing at the hearing, complainant's attorney moved for a default judgment upon the Complaint for the purpose of permitting the board to make findings of fact and conclusions of law consistent with the allegations. The motion was granted, contingent upon the submission of evidence sufficient to sustain such allegations.

Based upon the record herein, the administrative law judge recommends that the Board of Nursing adopt as its final decision in this case the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Kathleen Kay Cox, f.k.a. Kathleen Kay Bartee (D.O.B. 03/30/58) was licensed in the State of Wisconsin as a licensed practical nurse (license # 20607) on November 28, 1978. On or about August 13, 1991, her license was renewed after she had allowed it to lapse.

2. Ms. Cox's latest address on file with the Department of Regulation and Licensing is 1231 S. Atlanta Place, Tulsa, OK 74104.

3. On or about November 6, 1987, the Missouri Board of Nursing ("Missouri Board") disciplined Ms. Cox by revoking her license to practice as registered nurse, staying the revocation and placing her on probation for a period of four (4) years on the basis of substance abuse. In pertinent part, the terms of probation included notification to the Missouri Board of her current place of employment, continued treatment for chemical dependency, submission of evidence of attendance at AA/NA meetings, and compliance with the Nurse Practice Act, Chapter 335, RSMo.

4. Thereafter, Ms. Cox commenced practicing in Oklahoma as a registered nurse under a license she fraudulently procured, and while employed at the Tulsa Regional Medical Center, Tulsa, Oklahoma, she illegally diverted Demerol for her own personal use.

5. On or about September 27, 1989, the Oklahoma Board of Nurse Registration and Nursing Education ("Oklahoma Board") disciplined Ms. Cox, after hearing, by revoking her license to practice as a registered nurse upon finding that she furnished false information on her application for licensure by endorsement indicating no prior disciplinary action against her by another licensing authority, illegally diverted Demerol from her employer Tulsa Regional Medical Center, failed to notify the Missouri Board of her employment at Tulsa Regional Medical Center, and failed to provide documentation of attendance at support group meetings, and upon concluding that Ms. Cox did not have the desire for rehabilitation.

6. On or about February 13, 1990, the Missouri Board imposed discipline based on Ms. Cox's agreement to the revocation of her license as a registered nurse. The following facts were recited as cause for the Missouri Board to take disciplinary action: the illegal diversion of Demerol from her employer Tulsa Regional Medical Center, the failure to notify the Missouri Board of her employment at Tulsa Regional Medical Center, and the September 27, 1989 revocation ordered by the Oklahoma Board.

7. On or about May 3, 1991, the Wisconsin Board of Nursing ("Board") accepted the voluntary surrender of Ms. Cox's license to practice as a registered nurse upon concluding that she had been disciplined as a nurse in another jurisdiction through a final board adjudication.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this proceeding pursuant to Sec. 441.07, Wis. Stats.

2. By the conduct described above, Respondent Kathleen Kay Cox is subject to disciplinary action against her license to practice as a licensed practical nurse in the State of Wisconsin, pursuant to:

- a. Sec. 441.07(1)(c), Wis. Stats., and N 7.03(2), Wis. Adm. Code, by substance abuse impairing the ability to practice safely and reliably.
- b. Sec. 441.07(1)(d), Wis. Stats., by misconduct and unprofessional conduct, in that she furnished false information on an application for licensure as a nurse.
- c. Sec. 441.07(1)(d), Wis. Stats., and N 7.04(2), Wis. Adm. Code, by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.
- d. Sec. 441.07(1)(d), Wis. Stats., and N 7.04(7), Wis. Adm. Code, having disciplinary action through final board adjudication taken against one's certificate or license in another jurisdiction.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the voluntary surrender of the license to practice as a licensed practical nurse (#20607) of Respondent Kathleen Kay Cox, together with all rights and privileges conferred by said license, be accepted.

IT IS FURTHER ORDERED, that the license to practice as a licensed practical nurse (#20607) of Respondent Kathleen Kay Cox, together with all rights and privileges conferred by said license, be terminated effective on the date of the Final Decision and Order of the board.

IT IS FURTHER ORDERED, that Respondent Kathleen Kay Cox will not seek licensure in the State of Wisconsin as a nurse, unless she shows to the satisfaction of the Board that she is rehabilitated and is not unfit to practice by reason of substance abuse or dependency. The Board may, in its sole discretion, determine whether, and under what terms and conditions, Respondent may be licensed to practice as a nurse.

OPINION

By virtue of a decision issued May 3, 1991, the board accepted the voluntary surrender of Ms. Cox's license to practice as a registered nurse based upon her having been disciplined in other states. (See, Exhibit 4). As

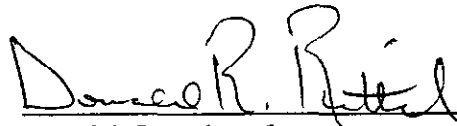
of that time Ms. Cox had not renewed her license as an L.P.N. and, therefore, that decision did not consider the expired L.P.N. license. However, she subsequently renewed as a L.P.N. on August 13, 1991 and this proceeding was commenced in order to take action at this time against her reacquired L.P.N. license.

The basis of the Complaint in this case is the same as that which led respondent to surrender her R.N. license--disciplinary action in other states. Her response in this proceeding to those charges is also the same--the voluntary surrender of the concerned license. (See, Exhibit 5).

It was recommended by complainant's attorney at hearing, and is recommended here, that the voluntary surrender of Ms. Cox's license as an L.P.N. be accepted. Such action is sufficient to assure that respondent cannot practice in this state until, and unless, she establishes to the satisfaction of the board that she is willing and capable of doing so in the future.

Dated: September 27, 1991.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Donald R. Rittel", is written over a horizontal line.

Donald R. Rittel
Administrative Law Judge

BDLS2-844

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Board of Nursing.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Board of Nursing

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Board of Nursing.

The date of mailing of this decision is November 11, 1991.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (c). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.